

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby adopts amendments to Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

These amendments to Chapter 64 reissue General Permit Nos. 1, 2 and 3, which authorize the discharge of storm water. General Permit Nos. 1, 2 and 3 were issued in 2007 for a five-year duration and expire October 1, 2012. This action will renew all three permits, extending their coverage another five years to October 1, 2017. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Iowa Administrative Code. These amendments also strike wording that was inserted in subrule 64.15(2) in error several years ago. The wording was intended by the Commission to be inserted into General Permit No. 2 but was instead inserted into the Iowa Administrative Code.

Several minor changes for clarification are being made in the general permits. Also, substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register (FR), Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009, and implemented in 40 CFR 450.21. Most of the measures published in the Federal Register notice are already included in General Permit No. 2. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The Code of Federal Regulations as amended by the Federal Register notice now requires topsoil preservation “unless unfeasible” at construction sites required to have a permit. Topsoil preservation has not been defined in the federal regulations. For clarity, the Commission has defined “topsoil preservation” as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers and city officials and consultation of the Statewide Urban Design and Specifications manual that stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4-inch topsoil depth requirement is consistent with these specifications and current development practices and will not impede the construction of these types of infrastructure. The Commission believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

The fee structure of the current permits has been retained.

It is not the intent of the Commission that the textual changes in the general permits be adopted in the Iowa Administrative Code but that these changes be made in the general permits themselves, which are adopted by reference into the Iowa Administrative Code.

Notice of Intended Action was published as **ARC 0118C** in the May 16, 2012, Iowa Administrative Bulletin. A public hearing was held on June 6, 2012. Comments were received through June 6, 2012. A responsiveness summary is available from the Department.

Following is a summary of the changes to be implemented in the general permits:

1. The storm water General Permit Nos. 1, 2 and 3 are readopted for another five-year period ending on October 1, 2017.
2. The provision contained in subrule 61.2(1) of the Iowa Administrative Code that requires implementation of the provisions of the “Iowa antidegradation implementation procedure” regarding discharges to outstanding Iowa waters and to outstanding national resource waters is inserted in General Permit Nos. 1, 2 and 3.
3. A new provision which stipulates that both the previous and new owners are responsible for notifying the Department of the transfer of property covered by General Permit No. 2 and that the notification requirement is satisfied when one party makes the notification is added to General Permit No. 2.
4. A new provision that adds “uncontaminated groundwater” to the list of allowable non-storm water discharges covered under the general permits is added to General Permit Nos. 1, 2 and 3.

5. The amount of time in which permittees are allowed to make changes in the pollution prevention plan (PPP) after notification by the Department that changes are necessary is reduced from seven days to three business days.

6. New provisions which incorporate the requirements of 40 CFR (Code of Federal Regulations) 450 that include preservation of topsoil, minimizing soil compaction and other federally required provisions are added to General Permit No. 2.

7. Minor textual changes are incorporated to update and clarify wording of the general permits.

The proposed changes to the permits have been further modified since publication of the Notice of Intended Action. The proposed changes in General Permit No. 1 have been modified as a result of the changes in the Code of Federal Regulations (CFR) that became effective June 15, 2012, regarding discharges from certain airports with 1,000 or more annual non-propeller aircraft departures. As these requirements appear in the CFR as an effluent limitation guideline, airports meeting the described criteria are already required to meet the guideline. The guideline is being included in General Permit No. 1 to inform the permittees of the requirements.

Other modifications to the proposed changes in the general permits have resulted from both informal discussions with stakeholders and formal comments received.

One comment received regarding the reduction from seven days to three business days in the amount of time in which permittees are allowed to make changes in the pollution prevention plan after notification by the Department that changes are necessary (paragraph "5" above) indicated that this change was creating a mandate that exceeds federal EPA requirements. This comment is referencing EPA's Construction General Permit (CGP) that EPA issues to construction projects in areas that it administers. The Department is allowed to have different standards than those contained in the CGP and has elected to do so in this instance based upon input from the Department's field office inspectors and from municipal inspectors. The inspectors have often witnessed excessively lengthy periods of time elapsing from the time the Department or municipality instructs permittees and site managers to implement changes and the time that the changes are implemented, often extending past the time of the next major rain event. It was agreed by stakeholders that the three-business-day proposal by the Department is an acceptable period of time within which to make the required changes. This requirement is more stringent than the federally adopted general permit, which allows such modifications to be made within seven calendar days. By changing this requirement to apply to "business days" only, the Department intends that no additional costs will be related to this measure in that it will not require modifications to be undertaken on non-business days.

Specific changes in the general permits from the changes originally proposed in the Notice of Intended Action are indicated by underscored text and are as follows:

In General Permit No. 1, insert Part I.B.2.G. regarding those types of discharges not allowed to be authorized by the general permit. These new discharges will be permitted with individual permits.

G. "Storm water discharge associated with industrial activity" from airports that begin operations on or after October 1, 2012, and have 1,000 or more annual non-propeller aircraft departures.

In General Permit No. 1, insert Part III.D.:

D. AIRPORTS Airports with 1,000 or more annual non-propeller aircraft departures are prohibited from discharging storm water containing urea (diaminomethanal). All airports with 1,000 annual non-propeller aircraft departures or more must either certify annually that airfield deicing products using urea are not used or must collect a grab sample once each month of the undiluted storm water runoff from the areas where the deicing products using urea have been used and meet a maximum daily limit of 14.7 mg/l of ammonia as nitrogen. Sampling is to be conducted each month from September through May. Annual certifications are to be kept with the pollution prevention plan.

In General Permit No. 1, insert Part V.B.8. as follows and renumber subsequent numbered sections:

8. AIRPORTS During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharge associated with industrial activity from areas at airports with 1,000 or more annual non-propeller aircraft departures on which urea (diaminomethanal) has been used in the current deicing season are subject to the following monitoring requirements in addition to any other applicable monitoring requirements:

A. PARAMETERS The parameters to be measured include:

- \* ammonia as nitrogen (mg/l);
- \* the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- \* the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and
- \* an estimate of the total volume (in gallons) of the discharge sampled shall be provided;

B. FREQUENCY OF MONITORING Sampling shall be conducted at least monthly (1 time per calendar month) from September to May, inclusive, except as provided by paragraph V.B.13.:

In General Permit No. 2, change the proposed final sentence in Part IV.B.3. from “Unless otherwise provided by the Department, the permittee shall have 4 days after such notification to make the necessary changes” to “Unless otherwise provided by the Department, the permittee shall have 3 business days after such notification to make the necessary changes.”

In General Permit No. 2, add the following paragraphs to the end of proposed Part IV.D.2.A.(2).(c).:

For sites where less than 4.0 inches of topsoil is to be in place after soil disturbing activities have been completed and final stabilization achieved for the permitted activity, a soil survey conducted by properly qualified personnel who regularly conduct soil surveys as part of their normal job duties must be conducted prior to commencement of soil disturbing activities that are permitted under the current permit authorization for the site. The results of the soil survey shall become part of the Pollution Prevention Plan and shall indicate the depth of topsoil at a suitable number of points on the site commensurate with standard engineering practices established for the size of the site.

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012, even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

Add or modify as indicated the following definitions in Part VIII. of General Permit No. 2:

“Uncontaminated groundwater” means water that is potable for humans, meets the narrative water quality standards in subrule 567—61.3(2) of the Iowa Administrative Code, contains no more than half the listed concentration of any pollutant in subrule 567—61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

“Construction site” means a site or common plan of development or sale on which construction activity, including clearing, grading and excavating, results in soil disturbance. A construction site is considered one site if all areas of the site are contiguous with one another and one entity owns or controls all areas of the site.

“Final Stabilization” means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures have been employed or which has been returned to agricultural production.

In General Permit No. 3, replace the following proposed paragraph in Part III.C.2.B.:

The owner or operator of a facility with a storm water discharge covered by this permit shall make plans available within three hours of being requested by the Department ~~upon request to the Department~~ or in the case of a storm water discharge associated with industrial activity which discharges through a ~~large or medium~~ municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

With the following:

The owner or operator of a staffed facility with a storm water discharge covered by this permit shall make plans available within three hours of being requested by the Department upon request to the Department or in the case of a storm water discharge associated with industrial activity which discharges through a ~~large or medium~~ municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system. For an unstaffed facility, the owner or operator shall provide plans by the end of the business day following the request by the Department or the municipal operator of the municipal separate storm sewer system with an NPDES permit.

Add the following definition in Part VIII. of General Permit No. 3:

“Staffed facility” means a facility at which one or more employees of the permittee are currently located.

Copies of the revised General Permit Nos. 1, 2 and 3 as adopted by reference herein are available upon request. Such request may be made by writing to the Storm Water Coordinator, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or by calling the Department’s Storm Water Coordinator at (515)281-7017.

After analysis and review of this rule making, no adverse impact on jobs has been found. The Department of Natural Resources reached out to the development and housing industry to narrowly tailor this rule making to minimize any adverse impact on jobs and maximize any positive impact on jobs. Stakeholders believe there could be a savings for developers and homebuilders in many instances because companies can use existing topsoil on site. A copy of the Jobs Impact Statement is also available upon request.

These amendments are intended to implement Iowa Code sections 455B.103A, 455B.183, and 455B.197.

These amendments shall become effective October 1, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 64.15(1) as follows:

**64.15(1)** Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, ~~2007 2012~~, to October 1, ~~2012 2017~~. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

ITEM 2. Amend subrule 64.15(2) as follows:

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No.2, effective October 1, ~~2007 2012~~, to October 1, ~~2012 2017~~.

~~a. Part I, provision B, section 1, paragraph A of General Permit No.2 is amended to read as follows:  
Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area),~~

~~b. Part VIII, under the definition: Storm water discharge associated with industrial activity, paragraph (x) of General Permit No.2 is amended to read as follows:~~

~~Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which is not part of a larger common plan of development or sale.~~

ITEM 3. Amend subrule 64.15(3) as follows:

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, ~~2007 2012~~, to October 1, ~~2012 2017~~. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities

which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.